as being negligent." Confronted with this conflict of, as he thought, two Federal Court decisions, the learned President Sessions Court loyally preferred the Malaysian decision to the Singapore one. But actually the authorities did not pose the difficulties he thought they did. The Singapore decision on negligence was that of the High Court at first instance. The appeal to the Federal Court was only on the quantum of the award. The principle of *stare decisis* requires him to follow the decision of the Superior Court rather than that of the lower court, when the decisions conflict. There was no doubt which decision he should follow. But the question of following decisions did not arise.

In our view, it would be well for trial judges of motor claim cases to avoid referring to cases where the decisions turn on their particular facts and to remember that dicta on negligence must be related to the facts of the cases. Their duty is to find on the facts before them whether one party has failed in his duty of care towards the other or whether both have failed in their mutual duty to one another. It is a decision on the facts of the case.

In the case under appeal, the relative position of the vehicles after the collision indicated clearly and beyond argument the liability of the motor-cyclist for the accident. His motor-cycle after the accident, had come to rest on the left hand side of the road as one faces north towards Kangar. He had, he said, wanted to turn left at the junction. If so, he would be travelling south. The collision was head-on. The motor-car had at all times kept to its side of the road. The collision took place on the motorist's side of the road. The conclusion is therefore inevitable that the motor-cyclist had shot across to the other side of the road before turning south. He had made a sweeping turn that took him over and into the path of the oncoming car. At a T-junction, it was not a case, as it was in both the cases referred to by the learned President Sessions Court, of having to expect someone coming out of a side road to cross to the other side. There was absolutely no reason to expect that the motor-cyclist, even if it was anticipated that he would disregard the stop-look-go indication across the side road, would execute such a sweeping and stupid turn. It was therefore not a case of the motorist not keeping a look-out. In the circumstances of this manoeuvre when the motorist was approaching the junction, there was nothing he could do to avoid the collision. The blame must be laid entirely at the door of the motor-cyclist.

The learned judge who heard the appeal made, with respect, one serious error on the facts. He thought that the motor-cyclist after coming out of the junction had turned north towards Kangar. If so, the motor-cyclist had every reason to be on the left hand side of the road, facing Kangar, where in the finding of the learned President Sessions Court the accident occurred. But since the motorist was travelling in this direction, he would then run down the motor-cyclist. The accident could not have been head-on as in fact it was, from the damage to the vehicles as seen in the photographs. But for this mistake, it would be doubtful that the learned judge would have upheld the decision.

We were of the unanimous opinion that the findings of the learned President Sessions Court when related to the sketch plan and the photographs established beyond any doubt that the accident was the result of the foolish and not merely careless or negligent riding of his motor-cycle by the plaintiff. Accordingly, we allowed the appeal with costs.

Appeal allowed.

Solicitors: *Cheang Lee & Ong; Aljeffri & Co.*

FOONG GUN MOOI v. LIM YEOK SOON

[F.C. (Ong Hock Sim, Raja Azlan Shah and Chang Min Tat F.JJ.) December 7, 1977 and January 9, 1978]

[Penang — Federal Court Civil Appeal No. 95 of 1977]

Tort — Negligence — Collision at cross-roads — Equal apportionment of liability by trial court — Appeal — No evidence to support finding.

This was an appeal by the appellant against the decision of the High Court at Penang which had assessed her liability as half for the collision with a motor-cyclist. It appeared that the motor-cyclist had come out of a side road, turned right across the road and into the path of the appellant's motor-car. The collision took place on the motorist's side of the road. The learned trial judge found that the motor-cyclist did not stop at the central white line. He however found the driver of the motor car party to blame as he said on the evidence the driver was chatting with her husband and probably looking at her baby whilst she was driving the car. There was no evidence to support the inferences made by the learned trial judge.

Held: as there was no evidence to support the findings of the learned judge, the judgment finding the motorist equally to blame for the accident could not stand. The evidence clearly pointed to the entire negligence of the motor-cyclist.

FEDERAL COURT.

R.J. Manecksha for the appellant.

B.S. Sidhu for the respondent.

Chang Min Tat F.J. (delivering the judgment of the Court): This appeal was by the defendant motorist who was dissatisfied with the decision of the High Court in Penang assessing her liability at a half for the collision with a motor-cyclist who had claimed damages from her. She said she was at all times travelling on the main road and on her correct side. The motor-cyclist had come from the opposite direction. He had intended to turn into Seang Teik Road which is a side-road forming a T-junction with the main road. He had turned right across the road and into her path. The collision took place on her side of the road. She denied she was to be blamed at all. She said that in the finding of the learned judge that the motor-cyclist did not stop at the central white line, this must be so.

It was the case for the motor-cyclist that he had stopped at this central dividing line to allow the motorist to pass before negotiating the turn. This the learned judge did not believe or accept. With respect, he could not have done otherwise. The uncontrovertible evidence of the sketch plan showing the positions of the vehicles after the accident leads to the inescapable inference that the accident occurred on the motorist's side of the road. The car had after the accident come to a halt with its offside front tyre

7' 1" and its offside rear tyre 7' 9" from the central white line. The motorist had clearly kept to her side of the road, and had never crossed over this line or gone too near to it. The motor-cycle was lying behind the motor-car on the motorist's side of the road. It was denied by the motor-cyclist that the motor-cycle had fallen as shown in the sketch and it was suggested that it had been moved. That could possibly be true since from the evidence of the damages to the vehicles, the collision was between the front of the motor-cycle and the offside bumper or front mudguard of the car. But the whole evidence indicated clearly that the accident occurred on the motorist's half of the road. And this was the finding of the learned judge.

But despite this evidence, he held the motorist blameworthy because he

"...found that the plaintiff had not yet turned his motor-cycle towards Seang Teik Road but had stopped to allow the defendant's car to pass him first. Although the defendant was not driving very fast, yet, on the evidence, I found that in chatting with her husband and probably looking at her baby whilst she was driving a motor-vehicle, the defendant's attention was distracted and she momentarily lost her power of concentration and control over the car whilst driving it and therefore failed to have sufficient regard for other traffic on the road."

Here then is the rationale for the learned judge's decision, but unfortunately the passage contains inferences of facts not justified by the evidence and at least one instance of pure speculation.

With great respect, if the motor-cyclist said he had stopped on his side of the white line and he was disbelieved, there could be no justification for the finding that he had stopped on the other side of the line, when he never said he did. And if he did not stop, then the conclusion must be that he had continued on his way, turned to go into the side road, getting into the motorist's path and run on to the side of the motor-car as the damages to the vehicles showed. There was also never any charge by the motor-cyclist that the motorist had lost control of the car. What he charged her with was disregarding his presence on his proper side of the road and running him down. The finding of loss of control of the car was therefore completely unjustified. Again, it was never put to the motorist that she was chatting with her husband, so that she had not the opportunity to deny it. There was not even the suggestion of any evidence to support this finding. As for the charge that she was probably looking at her baby whilst driving, that was clearly speculative. No evidence was adduced to support it. She was never asked to admit or deny it. It was not even suggested by the motor-cyclist.

There being therefore no evidence to support the findings of the learned judge, we came, with respect, to the conclusion that the judgment finding the motorist equally to be blamed for the accident could not stand. The evidence, in our view, too clearly pointed to the entire negligence of the motor-cyclist.

We therefore allowed the appeal with costs here and in the court below and set aside the judgment of the High Court. The respondent's claim stood dismissed.

Appeal allowed.

Solicitors: *Lim Kean Siew & Co.; B.S. Sidhu & Co.*

PLANTATION AGENCIES SDN. BHD. v. HAJI ARIFFIN BIN HAJI ISMAIL

[F.C. (Ong Hock Sim, Raja Azlan Shah and Wan Suleiman F.JJ.) December 9, 1977 and January 12, 1978]

[Penang — Federal Court Civil Appeal No. 116 of 1977]

Practice and Procedure — Parties — Doubt as to person to sue — Principal and agent — R.S.C., 1957, O. 16 r. 7.

Contract — Employment — Employment agency — Person employed through employment agency for employer — Dispute as to terms of service — Whether employee can sue the employment agency — Contracts Act, 1950, s. 183.

Agency — Employment agency — Contract entered on behalf of principals — Liability.

In this case the respondent had applied for a declaration relating to the terms and conditions of service of his employment. He sued not only his employer but also the appellants, who acted as the agent of the employer and other rubber estates to recruit personnel for the rubber estates. The appellant applied to be struck out from the writ but his application was dismissed in the High Court as the learned judge held that the appellants were the agents of the employer and the respondent could rely on Order 16 rule 7 of the Rules of the Supreme Court as there were doubts as to whom he should sue.

Held, allowing the appeal: (1) the appellants were not the employers of the respondent and the action should not have been brought against them;

(2) the appellants as agents were not personally liable on contracts entered into by them on behalf of their principals.

Case referred to:-

(1) *Prenn* v. *Simmonds*, [1971] 3 All E.R. 237.

FEDERAL COURT.

N.G. Sivanandan for the appellant.

H.R. Sankey for the respondent.

Chang Min Tat F.J. (delivering the judgment of the Court): The respondent on February 8, 1977 issued out a writ for a declaration

(i) that he is entitled to be emplaced on the salary scale of the Plantation Agencies Standard Terms of Service for Executive Staff on Estates which became effective on January 1, 1974 and all subsequent revisions thereto, and

(ii) that he is entitled to be paid all arrears of salary and all other benefits to be computed in accordance with the aforesaid Standard Terms.

These were the substantial reliefs sought to be obtained in the endorsement to the writ, though he did include in the statement of claim the usual omnibus prayer for such other relief as the court might deem fit. He sued two defendants, (1) Perbadanan Kemajuan Negeri Kedah and (2) Plantation Agencies Sdn. Bhd.

The question in this appeal is whether he was right to have sued Plantation Agencies Sdn. Bhd.

In his statement of claim, the respondent stated in clear and unmistakable terms that the first defendant was at all material times his employer and that the second defendant (the appellant before us) was the agent negotiating the said employment. He had entered into employment under the first defendant as manager of a rubber estate owned by the first defendant. The terms of the employment were in writing, in a form described as the Plantation Agencies Sendirian Berhad or PASB Standard Terms. This form